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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

NOV 22 1993

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

_____)	Gen. Docket No. <u>90-134</u>
In the Matter of)	ET Docket No. <u>92-100</u>
_____)	
Amendment of the Commission's)	RM-7140, RM-7175, RM-7618
Rules to Establish New Personal)	
Communications Services)	
_____)	

PETITION FOR RECONSIDERATION

Florida Cellular RSA Limited Partnership, an Illinois Limited Partnership, by its counsel and pursuant to Commission Rule 1.106, herein submits this its Petition for Reconsideration of the Second Report and Order in the above-referenced matter, released October 22, 1993. Florida Cellular RSA Limited Partnership ("Florida Cellular") respectfully requests that the Commission reconsider its October 22, 1993 Order, in part, for the reasons stated below.

I.

Statement of Interest

Florida Cellular holds licenses for cellular Rural Service Areas Florida 1 - Collier and Florida 3 - Hardee. In addition, James A. Dwyer, Jr., one of the principals of the Florida Cellular RSA Limited Partnership, is involved in

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various other cellular activities through related entities in Pennsylvania, Ohio and West Virginia.

Mr. Dwyer has been involved in mobile communications matters for over 25 years. He was a participant in the Commission's original cellular rulemaking in 1971. He has been involved in cellular operations since 1983. Mr. Dwyer filed Comments in his own name in response to the 1990 Notice of Inquiry in this proceeding and in response to issues raised at the December 5, 1991 en banc hearing. Comments were submitted in this proceeding on November 9, 1992 in the name of Florida Cellular RSA Limited Partnership.

II.

Background

By the above-referenced Order, the Commission established regulations for new personal communications service ("PCS"). The Order adopted regulations concerning spectrum allocations, licensing/authorization rules, and technical standards for both licensed and unlicensed PCS operations. Florida Cellular herein petitions for reconsideration regarding Rule §99.202, which relates to the frequency blocks assigned for PCS in §99.202(a) and §99.202(b). Florida Cellular requests that the spectrum blocks for Blocks A-G be redistributed to achieve parity among the licensees.

III.

Frequencies Available In Broadband PCS Service

Rule §22.202(a) makes frequency blocks available for Block A (30 MHz) and for Block B (30 MHz) in the major trading areas.

Section 22.202(b) allocates Block C (20 MHz), Block D (10 MHz), Block E (10 MHz), Block F (10 MHz), and Block G (10 MHz) in the basic trading areas. Blocks C and D will be made available for designated entities such as small business minorities and women.

Florida Cellular submits that the allocations are skewed to the large players, resulting in more spectrum to these already well endowed organizations. It is submitted that this will stifle true competition and opportunity for entrepreneurs to enter PCS. These are the very ones who brought innovation to cellular, through the open entry and competition made available in the Commission's decision in cellular. It should not be overlooked that this spirit was the impetus that gave the industry its initial boost. The same opportunity holds true for the perspective PCS industry as it unfolds. The Commission's actions in allocating 30 MHz to Blocks A and B will promote cream skinning in large markets to the detriment of filling-out the smaller markets, thus thwarting the goal of ubiquitous nationwide service.

Florida Cellular asserts that the Commission must ensure a level playing field to maximize entry opportunities

for designated entities, which will result in a wide range and scope of services.

However, Florida Cellular submits that a 10 MHz or even 20 MHz sliver of spectrum does not put the designated entities on equal footing with the larger players in the competitive market. Less spectrum means more capital must be put into facilities in order to maintain frequency coordination and provide the necessary coverage required by the FCC rules and regulations. In order for small business to accumulate an equal amount of spectrum, it must acquire multiple blocks of spectrum which could be split between the presently incompatible 1850-1970 MHz blocks and the 2130-2200 MHz blocks. Florida Cellular submits this additional level of complexity will require additional capital costs and unnecessary transaction costs, which are unfair to Blocks C-G licensees. To allocate 30 MHz each to Blocks A and B is giving those players who are able to bid and obtain licenses for Blocks A and B a head start over Block C since the Block C licensee may have to spend time to negotiate to accumulate the 30 MHz block to achieve parity with Blocks A and B. Thus, Block C licensees cannot adequately compete with those in Blocks A and B. Accordingly, Florida Cellular submits that Blocks A and B should be reduced to 20 MHz each and a new 20 MHz block established.

Florida Cellular agrees with Commissioner Andrew Barrett in connection with his comments concerning

Implementation of Section 309(j) of the Communications Act: Competitive Bidding, Docket No. 93-253, when he stated that "[P]ublic policy concerns for small business would provide a more equitable playing field [than that proposed] in order to ensure a diverse source of participants who can win a competitive bid." He also stated that he was concerned about the additional complexity of aggregating several 10 MHz slivers of spectrum. He mentioned in specific, that the 10 MHz blocks can only provide coverage of 15-30% of an area such as Chicago, Los Angeles and Dallas. Florida Cellular agrees with Commissioner Barrett that a small business should be given parity with the well-financed carriers who can afford to successfully bid for Blocks A and B. Florida Cellular asserts that the 10 MHz allocations are merely second class citizens in the frequency game.

Florida Cellular also questions the aggregation of 40 MHz total per market, outlined in the Order, supra at para. 61, and asks how a cellular carrier can aggregate to this level, when it is only allowed 10 MHz in its market. Florida Cellular asserts that the 10% coverage exclusion is too narrow and should be raised to a reasonable level, i.e., 20%, in order for the cellular carrier to adequately compete with the other PCS carriers.

Florida Cellular also submits that the definition of small business needs modification. Florida Cellular submits

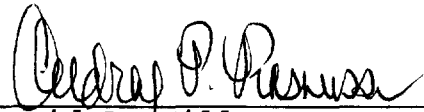
that small businesses should be defined as those businesses with capitalization of \$100 million and no more than 300 employees as a ceiling, in order to insure that those businesses that are not competing for frequencies with the same financial backing as well financed players can achieve parity.^{1/}

WHEREFORE, the above premises considered, Florida Cellular respectfully requests that the Commission reconsider its Order as described above.

Respectfully submitted,

**FLORIDA CELLULAR RSA
LIMITED PARTNERSHIP**

By:



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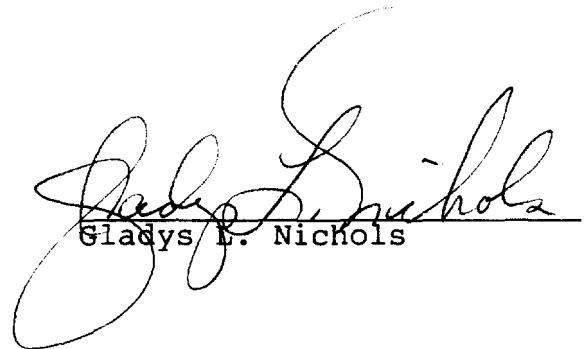
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Dated: November 22, 1993

^{1/} This definition must also be included in the Commission's Auction Rules. See Docket No. 93-253, Implementation of Section 309(j) of the Communications Act: Competitive Bidding.

CERTIFICATE OF SERVICE

I, Gladys L. Nichols, do hereby certify that on this 22nd day of November, 1993, the foregoing **PETITION FOR RECONSIDERATION** was served to the parties as indicated on the attached list.


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